

LICENSING OF AUCTIONS BY MUNICIPALITIES



State of Wisconsin

DEPARTMENT OF REGULATION AND LICENSING

C O R R E S P O N D E N C E / M E M O R A N D U M

DATE: May 6, 1994 **FILE REF:** AUB3.DOC

TO: Clete Hansen

FROM: Don Rittel

SUBJECT: Licensing of Auctions by Municipalities

ISSUES: You have asked whether municipalities retained the authority to regulate auctions after the repeal of Ch. 130, Stats., effective May 11, 1990; and if so, whether they may continue to do so after March 1, 1995, when state regulation of auctioneers by the Auctioneer Board goes into effect.

OPINION: In my opinion, the repeal of Ch. 130, Stats., did not divest municipalities of the authority to regulate auctioneers in light of the "Home Rule Amendment" contained in Article XI, Section 3 of the Wisconsin Constitution. However, municipalities may not continue to impose licensing or other requirements upon auctioneers which are inconsistent with the statewide regulation enacted pursuant to Ch. 480, Stats., beginning March 1, 1995.

DISCUSSION: 1993 Wisconsin Act 102 created Ch. 480 of the Wisconsin Statutes, mandating state licensure and regulation of auctioneers and auction companies effective March 1, 1995. Historically, auctions had been regulated locally by municipalities pursuant to Ch. 130, Stats. However, that provision was repealed by the Legislature effective May 11, 1990, by 1989 Wisconsin Act 336, §250op. Therefore, from May 11, 1990 to March 1, 1995, there will have been no *statute* specifically addressing the regulation of auctioneers at either the local or state level.

Your memo states: "...it appears that, absent any provision located elsewhere in the statutes which grants to municipalities the authority to license auction events or auctioneers, municipalities should have stopped licensing them after May 11, 1990."

If municipalities derived their regulatory authority solely from statutory enactments of the legislature (similar to the situation with this agency and the Auctioneer's Board), the above

assumption would be correct. However, municipalities are not dependent upon the legislature for all of their powers; but rather, derive independent regulatory authority under the Wisconsin Constitution.

Article XI, Section 3 of the Wisconsin Constitution (known as the "Home Rule Amendment" in case law) states, in part:

"Municipal home rule . . . Cities and villages organized pursuant to state laws may determine their local affairs and government, subject only to this constitution and to such enactments of the legislature of statewide concern as with uniformity shall affect every city or every village. The method of such determination shall be prescribed by the legislature."

There are a multitude of Wisconsin Supreme Court decisions which discuss the constitutional authority of a municipality to exercise its constitutional power over "local affairs" in light of the legislature's ability under the same constitutional provision to limit that power. Simply stated for our purposes, the cases boil down to the general proposition that a municipality may reasonably regulate any area of interest to the locality, unless the state has preempted the area through enacting legislation to require its regulation by the state, itself; or has statutorily directed municipalities regarding the specific manner in which the municipalities could regulate them. See, e.g., *Anchor Savings & Loan Ass'n v. Madison* EOC, 120 Wis. 2d 391 (1984), for a synopsis of some of the leading cases.

Accordingly, Chapter 130, can be viewed as a valid exercise of the legislature's authority to mandate that municipalities regulate auctions in a uniform manner, to the extent municipalities chose to regulate them. For example, Sec. 130.06(1), Stats., provided that ordinances could be adopted to require that persons conducting auctions be licensed by the municipality, detailed the information required on the license application, and provided for specific licensing fees and bonding requirements.

In the absence of any state legislation, the conduct of auctions within a community would be a legitimate matter of "local affairs" which could be reasonably regulated by municipalities.' Accordingly, when Chapter 130 was repealed, effective May 11, 1990, the effect was not to deprive municipalities of their underlying authority granted by the Wisconsin Constitution to regulate auctions as a matter of local concern; but rather, removed the state "uniformity" requirements of such local regulation which the legislature had previously chosen to impose.

Therefore, it is my opinion that between May 11, 1990 and March 1, 1995 (the day state regulation of the area begins), municipalities may regulate auctions as a matter of determining their local affairs under the authority vested in them by the Home Rule Amendment contained in Article XI, §3 of the Wisconsin Constitution.

"The fact that municipalities are no longer required to regulate auctions in conformity with the dictates of repealed Ch. 130, Stats., does not mean they are not subject to other legal restrictions. For example, municipal regulations **must** be "reasonable", in **that** the amount of license fees levied, or bond required, may not be so exorbitant **as** to essentially prohibit auctions from being conducted. See; 51 Am Jur 2d, Licenses and Permits, §39, pp. 46-7.

This will not be the case beginning March 1, 1995, however, when state regulation of auctioneering legally commences. As stated within the Home Rule Amendment, the regulatory authority of municipalities is subject to the legislature's power to determine uniform requirements in areas of statewide concern. Consistent with that authority, whereas the legislature previously took the approach of promoting uniformity through *local* enforcement under the Chapter 130, Stats., the creation of the Auctioneer Board by 1993 Wisconsin Act 102 is a clear pronouncement that subsequent regulation of auctioneers shall be the responsibility of the *state*, commencing March 1, 1995.

Case law indicates that regulation and control by the state under statutes which establish a comprehensive and all-encompassing scheme regarding the practices affected, serves to preempt any local regulation which conflicts with the general comprehensive policy established under the state. See, *Anchor Savings & Loan Ass'n*, *supra*. Chapter 480, Stats., is clearly such a "comprehensive and all-encompassing" scheme of regulation. It addresses the licensing of auctioneers and auction companies, the amount of licensing fees, licensing examinations and continuing education, the specific conduct of auctions, the keeping and maintenance of records, trust accounts, advertisements, provides for the possible establishment of a consumer protection fund, and the creation of a code of professional conduct and formal state disciplinary process. In my opinion, the scope of the regulatory system created within Ch. 480, Stats., is such that it clearly demonstrates the intent of the legislature to preempt local regulation of the area.

CONCLUSION: Accordingly, it is my opinion that municipalities may not regulate auctioneers after March 1, 1995, but may do so prior to that date.